

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Patrick David English,

Debtor.

Case No. 07-55986

Chapter 7

Hon. Phillip J. Shefferly

**ORDER DENYING STIPULATION FOR ENTRY OF
ORDER REGARDING ASSUMPTION OF LEASE**

On July 7, 2008, the Debtor converted this case from Chapter 13 to Chapter 7. On October 28, 2008, the Debtor received a discharge. On October 29, 2008, the Debtor and Wells Fargo filed a stipulation (docket entry #48) providing for the Debtor to assume a lease of a 2005 Dodge Ram with Wells Fargo. Upon filing the stipulation, the Debtor and Wells Fargo submitted to the Court for entry a proposed "Order for Assumption of Lease." The stipulation and proposed order do not set forth any authority for the relief requested by the proposed order. Section 365(p) of the Bankruptcy Code governs assumption of personal property leases by individual Chapter 7 debtors. Section 365(p) was added to the Bankruptcy Code by BAPCPA. This section of the Bankruptcy Code permits an individual debtor to assume a lease of personal property where such lease is rejected or not timely assumed by the Chapter 7 Trustee and the leased property is therefore no longer property of the estate under § 365(p)(1). Section 365(p)(2) specifies the manner in which this right of assumption may be negotiated and implemented by debtor. Section 365(p)(2)(B) makes it clear that upon such assumption, "the liability under the lease will be assumed by the debtor and not by the estate." Assumption of a personal property lease by a debtor under § 365(p) does not require Court approval because it does not create a liability of the estate and it only applies to personal property which is not property of the estate. Because assumption of a personal property lease under

§ 365(p) does not require Court approval, and because the stipulation filed by the Debtor and Wells Fargo does not request the Court to adjudicate any issue, the Court concludes that no purpose is served by entering the proposed order that the Debtor and Wells Fargo have submitted. The proposed order simply repeats what the Debtor and Wells Fargo have set forth in their stipulation. Accordingly,

IT IS HEREBY ORDERED that the request of the Debtor and Wells Fargo to enter an “Order for Assumption of Lease” is denied without prejudice to the right of the Debtor and Wells Fargo to enter into their stipulation (docket entry #48) in accordance with § 365(p).

Signed on October 30, 2008

/s/ Phillip J. Shefferly
Phillip J. Shefferly
United States Bankruptcy Judge